

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES,

V.

Crim. No. 1:08cr194
Hon. T.S. Ellis, III

OSCAR OMAR LOBO-LOPEZ,
Defendant.

DEFENDANT'S THIRD MOTION TO CONTINUE SENTENCING AND FOR
ENLARGEMENT OF TIME IN WHICH TO FILE SUPPLEMENTAL PLEADING

COMES NOW, Defendant Oscar Omar Lobo-Lopez, by and through counsel, and moves this Court to continue Defendant's September 4th deadline for a pleading to supplement his pending motion to compel discovery and to continue sentencing of this matter currently scheduled for September 18, 2009.

Defendant's pending discovery motion is a precursor to an imminent motion to set aside the verdict for reason of the Government's failure to disclose the identity and location of Julio Chavez, aka "Flecha," an alleged participant in the murder at bar. In order to establish the context and repercussions of this and other failures to disclose, Defendant has moved for the disclosure of all records in the possession of the Government reflecting statements by or about specified witnesses pertaining to their alleged participation in or observance of the murder - Dado, Flecha, Ciego, Snarf, Bicho and Little Man. Of pivotal importance to the proper pleading or consideration of either motion will be what the Government has said in regard to these witnesses and when it has said so.

It bears noting that until very shortly before trial, Defendant was provided only with numbers to identify key witnesses except for “Bicho” and “Lindo” and those designated material witnesses. “Flecha” as such never appeared in the discovery and Defendant was never provided the connection between Flecha and his real name of Julio Chavez whose photograph was repeatedly shown witnesses early on in the investigation. Undersigned counsel do not wish to mischaracterize any Government representation and therefore ordered on July 30th transcripts of all hearings following the plea of co-defendant Sergio Amador as well as co-defendant Amador’s trial testimony. (The Government has stated in its response to the discovery motion that it first became aware of Flecha’s role in the murder after co-defendant Amador (“Dado”) pled guilty on February 27, 2009.) Said transcripts have not yet been produced.

In addition, on August 28, Defendant was provided pursuant to this Court’s order of the 21st, with 302s from the law enforcement interviews of “Ciego,” the sole participant to have exculpated Defendant expressly. These 302s, reports of interviews conducted in March but not memorialized until May, vastly exceed in breadth and detail the Government’s disclosure as to Ciego’s statement/s.¹ The 302s are Brady material and should have been disclosed at the time of the interviews – not four months post trial and weeks beyond the original sentencing date.² The insufficiency of the Government’s disclosure as to Ciego creates an additional dimension to the supplemental pleading currently due on the 4th. For purposes of this as well as other portions of Defendant’s argument, the transcripts ordered on July 30th are integral to assure no discussion or

¹ Undersigned counsel understand from another case that internal FBI protocol calls for production of a 302 within ten days of the interview being reported.

² *Brady v. Maryland*, 373 U.S. 83 (1963).

representation regarding the content or timing of disclosures is overlooked or misrepresented.

In the same vein, undersigned counsel were under the impression that the Court, to assist Defendant in supplementing his discovery motion, had ordered a transcript of the last hearing on August 21st during which the Government made several representations as to the progression of the state of its knowledge and its subsequent disclosures. Undersigned counsel confirmed on September 1, that the transcript order has been cancelled. Defendant therefore requests the Court's endorsement of a CJA-24 to be filed separately for expedited delivery of said transcript.

Finally, Defendant has sought from the outset of the case to locate "El Bicho," a witness to the murder who exculpates Defendant. This witness has apparently been known by more than one name and the Government has not yet been able to confirm that he has not been deported. In the event he is discovered to have been deported, Bicho's deportation would constitute an additional basis for a motion to set aside the verdict as per *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982).

In order to enable the Court's consideration of Defendant's discovery motion and to enable Defendant to frame the envisioned motion to set aside the verdict, the aforementioned transcripts and the determination of whether Bicho has been deported are indispensable. To finalize the conviction by imposing sentence prior to resolution of the pending issues would be premature.

Therefore, Defendant requests additional time in the Court's discretion to enable production of the aforementioned transcripts and a determination as to whether Bicho has been deported before being required to submit his pleading to supplement his discovery

motion. Additionally, Defendant requests sentencing be continued to enable consideration of a motion to set aside the verdict to be forthcoming once the discovery motion is resolved.

Respectfully Submitted,

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By Counsel

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Certificate of Electronic Service

I hereby certify that on September 1, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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